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BISI JINGGOT & ORS v. LEMBAGA AMANAH KEBAJIKAN DARUL FALAH

COURT OF APPEAL, PUTRAJAYA
SUPANG LIAN JCA
MOHD NAZLAN GHAZALI JCA
B AZIZUL AZMI ADNAN JCA
[CIVIL APPEAL NO: Q-01(IM)(NCVC)-265-05-2021]
18 MARCH 2024

C **Abstract** – *Under s. 134(1) of the Land Code (Sarawak) (Cap. 81), where an issue document of title or an entry or amendment on the register of title has been procured or made by fraud, that title, entry or amendment is defeasible at the instance of the person who had been defrauded. Even if the registered proprietor had not been complicit in the*
D *fraud, so long as his title or entry onto the register had been procured or made by fraud, his title would be susceptible to challenge by the person defrauded.*

E ***LAND LAW:*** *Indefeasibility of title and interest – Fraud – Alienation of native customary rights land to registered proprietor – Claim for declaratory orders that titles null and void – Allegation of fraud – Whether indefeasibility defeated by fraud – Whether failure to plead fraud negated claim – Whether proof that title 'procured or made by fraud' sufficient to make title defeasible – Whether suffice even if title procured by fraud by action of others – Land Code (Sarawak) (Cap. 81), ss. 132(1), 134(1) & (2)*

F ***CIVIL PROCEDURE:*** *Pleadings – Fraud – Alienation of native customary rights land to registered proprietor – Claim for declaratory orders that titles null and void – Allegation of fraud – Whether inconsistent with contents of statement of claim – Whether contravened rules of pleadings – Whether failure to plead fraud negated claim – Rules of Court 2012, O. 18 r. 10*

G The appellants' ('plaintiffs') claim was for native customary rights ('NCR') over land measuring more than 220 acres in the Matang district in Sarawak, created in the 1940s. A settlement survey exercise had been carried out over the subject lands in 1972 by the Superintendent of Lands and Surveys,
H Kuching. This survey recorded the names of several claimants of NCR over the subject land, including the predecessors-in-title and ancestors of the plaintiffs. Despite this settlement survey and without any extinguishment of the NCR of the claimants, the land was alienated to the respondent ('third defendant') in 1993. The leases, for a period of 99 years, were granted for
I a consideration of a peppercorn per annum. The plaintiffs' pleaded case was that the alienation and transfer to the third defendant was effected fraudulently by the first defendant and the second defendant, the State Government of Sarawak. It was also contended that the first and second

defendants were in breach of their fiduciary duties to the plaintiffs when they did so. The plaintiffs thus sought a declaration to the effect that the two titles held by the third defendant over the subject land were null and void. The third defendant made an application under O. 14A of the Rules of Court 2012 ('ROC') for the determination of two preliminary questions of law: (i) whether, the effect of the decision of the Federal Court in *TH Pelita Sadong Sdn Bhd v. TR Nyutan & Ors And Other Appeals* ('*TH Pelita Sadong*') and the Court of Appeal in *Yahya Timbon & Ors v. Kumpulan Parabena Sdn Bhd*, on the plaintiffs' action against the third defendant was that the plaintiffs had no right in law whatsoever to claim declaratory order or any other legal remedy against the third defendant, the registered proprietor of Lots 85 and 86 both of Block 1 Matang Land District and should therefore be summarily dismissed; and (ii) whether the third defendant by virtue of being the registered proprietor of Lots 85 and 86 both of Block 1 Matang Land District and the holder of the issue documents of title thereto issued by the Superintendent of Lands and Surveys, holds an indefeasible title to the same as against the plaintiffs who accordingly, had no cause of action against the third defendant. The High Court answered both the questions in the affirmative and proceeded to dismiss the plaintiffs claim against the third defendant. Hence, this appeal.

Held (allowing appeal with costs; setting aside order of High Court)
Per Azizul Azmi Adnan JCA delivering the judgment of the court:

(1) Fraud has been expressly provided, in s. 132(1) of the Land Code (Sarawak) (Cap. 81) ('SLC'), as an exception to the general principle of indefeasibility of the title of a registered proprietor. In *TH Pelita Sadong* the plaintiffs had not alleged fraud on the part of the defendant or the interveners. On the contrary, in the present case, what was being alleged was the vitiating factor of fraud. Hence, the reliance placed by the High Court on *TH Pelita Sadong* was misplaced and constituted a misdirection in law. (paras 16, 18 & 21)

(2) Under the first limb of s. 134 of the SLC, where an issue document of title has been procured or made by fraud, that title is defeasible at the instance of the person who had been defrauded. There are no words in first limb of sub-s. (1) of s. 134 that requires the fraud to have been committed by the registered proprietor. It suffices if the registered proprietor's title had been 'procured or made by fraud', in which event it will be defeasible at the instance of the defrauded person. Even though fraud had not been pleaded against the third defendant, nonetheless the law does not require the registered proprietor to be complicit in the fraud before his title may be assailed; it suffices if his title had been procured by fraud by the action of others. (paras 26, 27 & 29)

(3) The respondent could not avail itself of the protection accorded by s. 134(2) of the SLC because, on its true construction, sub-s. (2) only protects a *bona fide* purchaser for valuable consideration who is also a

A subsequent purchaser. The phrase 'on the ground that the registered proprietor through or under whom he claims was registered as proprietor through fraud or error' connotes the existence of a prior registered proprietor. The third defendant did not take its title from a prior purchaser. The land had been alienated for the first time to the B third defendant. (paras 33 & 35)

(4) It is preferable that an allegation of fraud that had not previously been raised in pleadings be effected through an amendment of the statement of claim, rather than raised in the reply to the defence. Nonetheless, in the context of the present case, there had not been any contravention of C the rules on pleadings. The contention of fraud in the reply to the defence was not inconsistent with the contents of the statement of claim as provided under O. 18 r. 10 of the ROC. Even if this had been the case, it was clear that the justice of the case would have required the court to direct the plaintiffs to amend their statement of claim, rather than a total D dismissal of the action against the third defendant. (paras 38 & 40)

(5) The two questions posed in the O. 14A application was thus answered in the negative. The plaintiffs' claim against the third defendant was remitted to the High Court for a determination on the merits. (para 43)

E **Case(s) referred to:**
TH Pelita Sadong Sdn Bhd & Anor v. TR Nyutan Jami & Ors And Other Appeals [2018] 1 CLJ 19 FC ***(dist)***

Legislation referred to:
Land Code (Sarawak) (Cap. 81), ss. 132(1), 134(1), (2)
Rules of Court 2012, O. 14A

F *For the appellant - Andrew Winston Kaya; M/s Winston Kaya*
For the respondent - Yap Khan Kee; M/s Ee & Lim

[Editor's note: Appeal from High Court, Kuala Lumpur; Suit No: KCH-22NCVC-35-7-2019 (HC3) (overruled).]

G *Reported by S Barathi*

JUDGMENT

Mohd Nazlan Ghazali JCA:

H **Introduction**

[1] The present appeal was against the decision of the High Court allowing an application under O. 14A of the Rules of Court 2012, by which the appellant plaintiffs' case was struck out as against the respondent, which was I the third defendant in the court below. The case turned upon the true construction of s. 134 of the Sarawak Land Code, which provides for the circumstances under which a land title may be challenged on account of fraud.

[2] We allowed the appeal and directed that the case be remitted back to the High Court for trial. The reasons for our decision are recorded here. In these grounds of judgment, the parties will be referred to as they were in the court below.

Material Background Facts

[3] The plaintiffs in this case claimed native customary rights over land measuring more than 220 acres in the Matang district in Sarawak. According to the plaintiffs, customary rights over this land were created in the 1940s. In 1993, the land was alienated to the third defendant, Lembaga Amanah Kebajikan Darul Falah.

[4] A settlement survey exercise had been carried out over the subject lands in 1972 by the first defendant, who is the superintendent of lands and Surveys, Kuching. This survey recorded the names of several claimants of native customary rights over the subject land, including the predecessors-in-title and ancestors of the plaintiffs.

[5] Despite this settlement survey having been conducted and without any extinguishment of the native customary rights of the claimants, the land in question was alienated to the third defendant in 1993. Two leases were granted to the third defendant, the total land area of which was 90.817 hectares, or approximately 224.41 acres. The leases were granted for a period of 99 years. The consideration payable to the state for each lease is a peppercorn per annum.

[6] The plaintiffs' pleaded case was that the alienation and transfer to the third defendant was effected fraudulently by the first defendant and the second defendant (being the state government of Sarawak). It was also contended that the first and second defendants were in breach of their fiduciary duties to the plaintiffs when they did so. The plaintiffs further contended that they had discovered the alleged fraud only in 2016, and hence, they were not barred by limitation.

[7] It is important to observe the following points:

(i) there was no allegation of fraud against the third defendant (the respondent here); and

(ii) the contention of fraud against the first and second defendants was only raised in the plaintiffs' reply to the defence.

[8] Among the reliefs sought by the plaintiffs was a declaration to the effect that the two titles held by the third defendant over the subject land are null and void.

The Order 14A Application

[9] The third defendant made an application under O. 14A of the Rules of Court 2012 for the determination of two preliminary questions of law. The two questions posed were as follows (*in verbatim*)**:**

> (i) whether, the effect of the decision of the Federal Court in *TH Pelita Sadong Sdn Bhd v. TR Nyutan & Ors* [2018] 1 CLJ and Court of Appeal in *Yahya Timbon & Ors v. Kumpulan Parabena Sdn Bhd* [2020] 5 MLJ 774, on the plaintiffs' action against the third defendant is that the plaintiffs have no right in law whatsoever to claim declaratory order or any other legal remedy against the third defendant who is the registered proprietor of Lots 85 and 86 both of Block 1 Matang Land District and should therefore be summarily dismissed; and
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> (ii) whether the third defendant by virtue of being the registered proprietor of Lots 85 and 86 both of Block 1 Matang Land District and the holder of the issue documents of title thereto issued by the Superintendent of Lands and Surveys; holds an indefeasible title to the same as against the plaintiffs who accordingly have no cause of action against the third defendant.

[10] Should these questions be answered in the affirmative, the third defendant prayed for the suit against it to be dismissed.

The Decision Of The High Court

[11] The learned High Court Judge hearing the application answered both the questions posed in the affirmative and proceeded to dismiss the plaintiffs' claim against the third defendant.

[12] The High Court expressed two reasons for this decision:

(i) first, the third defendant had obtained an indefeasible title that could not be challenged by the holder of prior (and unextinguished) native customary rights over the land; and

(ii) neither fraud nor conspiracy had been pleaded against the third defendant.

[13] The relevant passages of the grounds of judgment of the High Court bear setting out in full:

> [29] In respect of the NOA at enclosure 125, applying the principles of *TH Nyutan,* the third defendant has indefeasibility of title and this is supported by the principals in *Nikodemus Singai & Ors v. Sibu Slipway Sdn Bhd & Ors* [2010] 10 CLJ 383 whereby it was held that:
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> > and titles should not be issued over native customary land, unless they have been extinguished first but was respect, once the titles are issued, I take the contrary stand and the defendants are right-there is indefeasibility of title.

[30] Moreover, the land was alienated to the third defendant way back in 1993 and the allegation by the plaintiffs were merely allegations that they might have knowledge of the fraud by the 1st and 2nd defendants in giving the land to them could not hold water and unsustainable.

[31] Furthermore, as highlighted by the 3 defendant and in their pleading *ie*, Statement of Claim, there is no allegation of fraud nor conspiracy being made against the 3 defendant together with the 1st and 20 defendants in the alienation process of the said Lands. It is mere suspicion that the 3d defendant must have knowledge of the fraud by the 1st and 2d defendants on the transaction and as a result Enclosure 125 ought to be allowed with a minimal cost of RM1,000.

Analysis

Summary

[14] The following summarises the findings of this court:

(i) there were no allegations of fraud made in the case of *TH Pelita Sadong Sdn Bhd & Anor v. TR Nyutan Jami & Ors And Other Appeals* [2018] 1 CLJ 19, unlike in the present case. Under the Sarawak Land Code, fraud has been expressly provided as an exception to the general principle of indefeasibility of title. Hence, the court below erred in law when it relied on *TH Pelita Sadong v. TR Nyutan Jami* to dismiss the plaintiffs' case;

(ii) section 134(1) of the Sarawak Land Code, on its proper construction, does not require fraud to have been committed by the registered proprietor. It suffices if the registered proprietor's title had been "procured or made by fraud", in which event it will be defeasible at the instance of the defrauded person. On the facts of the present case, the plaintiffs allege that the first and second defendants had acted fraudulently in alienating the land to the third defendant. If the plaintiffs' claims against the first and second defendant are made out, it follows therefore that the third defendant's title would be liable to be set aside. This would be the case even though there is no allegation of fraud against the third defendant; and

(iii) section 134(2), which provides for the indefeasibility of title of a *bona fide* subsequent purchaser for valuable consideration, cannot be invoked by the third defendant, because the third defendant does not take its title from a prior purchaser.

[15] These findings are explained in further detail in the following paragraphs.

Indefeasibility

[16] The principle of indefeasibility of title applies under the Sarawak Land Code, as it does under the National Land Code 2020. Like for the rest of Malaysia, fraud is one of the exceptions that may operate to defeat the title of a registered proprietor. Section 132(1) of the Sarawak Land Code provides for the general principle of indefeasibility of the title of a registered proprietor, and also expressly states that fraud operates as an exception to that general principle:

> Indefeasibility of title
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> 132. (1) Subject to this Code, the registered proprietor of any estate or interest in land to which this section applies shall, except in the case of fraud, hold such estate or interest subject to the interests noted on the Register but free from all other interest except:
>
> (a) the estate or interest of a proprietor included in the Register in priority to the title under or through which the first mentioned registered proprietor claims, being an estate or interest to which this section applies;
>
> (b) as regards any portion of land included in the issue document of title by virtue of a wrong description:
>
> Provided that this exception shall not apply if the registered proprietor is a purchaser in good faith and for value of the portion of land affected, or derives title through such a purchaser;
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> (c) the implied conditions, obligations and restrictions referred to in section 32;
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> (d) the interest of a tenant in possession of land for a term not exceeding one year;
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> (e) any charge affecting the land under any written law; and (f) any easement lawfully created and subsisting on the 1st day of January, 1958, or at such later date when the estate or interest affected by such easement becomes included in the Register.

[17] Reliance was placed by both the third defendant and the High Court judge on the Federal Court case of *TH Pelita Sadong v. TR Nyutan Jami* [2018] 1 CLJ 19 for the principle that a pre-existing native customary right over a piece of land would not have supremacy over a title subsequently registered over the same land. In that case, the Sarawak state government alienated land by issuing provisional leases to the first and second defendants, who, during the pendency of the case at the High Court, sold the leases to TH Pelita Sadong Sdn Bhd and TH Pelita Gedong Sdn Bhd. These companies intervened in the subsequent appeals. The High Court had made a definitive finding of fact that the plaintiffs – who were Ibans suing on behalf of their community in Kampung Lebor – possessed pre-existing native customary

rights over the land in dispute. Despite this, the Federal Court held that those unextinguished native customary rights could not defeat the subsequent registered titles of the interveners. The judgment of the Federal Court stated as follows:

> It is our judgment that s. 132 of the Sarawak Land Code pertaining to indefeasibility of title remains applicable even if it could be shown that NCR had been created over land in the manner prescribed under the same Code. A claim for NCR does not defeat the indefeasibility of title of land, even though the interest stated in the issue document of title was issued after NCR was asserted. The first and second defendants' rights as leaseholders, and the first and second interveners as proprietors and the third intervener as chargee are not defeated by the plaintiffs' claim to NCR.

[18] In *TH Pelita Sadong v. TR Nyutan Jami,* the plaintiffs had not alleged fraud on the part of the defendants or the interveners. This, in our considered judgment, is a critical point of distinction, because, as explained, fraud has been expressly provided as an exception to the general principle of indefeasibility of the title of a registered proprietor.

[19] In the context of present case, the court was not so much concerned with the question of whether native customary rights would prevail over a registered interest, but rather whether fraud on the part of a person other than the registered proprietor could operate to defeat his title.

[20] In *TH Pelita Sadong v. TR Nyutan Jami*, the Federal Court expressly recognised none of the factors that could vitiate indefeasibility had been proven in that case:

> [40] It is our judgment that an NCR claim without title should not be put on a better footing with differential treatment. *(Bato Bagi & Ors v. Kerajaan Negeri Sarawak & Another Appeal* [2011] 8 CLJ 766). A claim for NCR and indefeasibility of title exist side by side. Based on the facts of this case, the disputed lands were converted to registered entities even before the plaintiffs succeeded in their NCR claim.
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> [41] **In the absence of the vitiating factors under s. 132 of the Sarawak Land Code**, the first and second defendants' rights as leaseholders, and the first and second interveners as proprietors and the third intervener as chargee cannot be defeated by the plaintiffs' NCR.
>
> (emphasis added)

[21] By contrast, in the present case, what is being alleged is the vitiating factor of fraud. It is accordingly our view that, the reliance placed by the court below on *TH Pelita Sadong v. TR Nyutan Jami* at para. 29 of the grounds of judgment of the High Court was misplaced and constituted a misdirection in law.

Fraud And Section 134

[22] The effect of fraud is provided for by s. 134 of the Sarawak Land Code, which reads as follows:

> Effect of fraud
>
> 134. (1) Any issue document of title or entry or alteration in the Register procured or made by fraud shall be void as against any person defrauded, or who may be defrauded, thereby, and no person who is a party or privy to the fraud, or who claims solely as a volunteer under such person, shall take any benefit therefrom.
>
> (2) Nothing in this Code shall be so construed as to place in doubt the title of any person who is a purchaser in good faith and for value of any interest, and who is registered as the proprietor of such interest, on the ground that the registered proprietor through or under whom he claims was registered as proprietor through fraud or error, whether such fraud or error consisted in a misdescription of the land or otherwise.

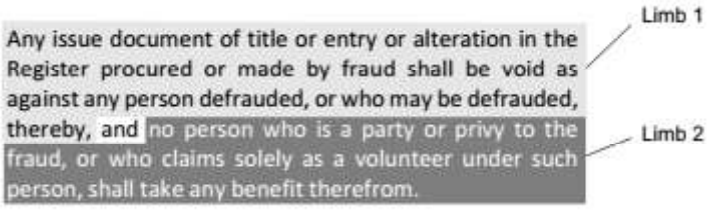
[23] Subsection (1) is the principal operative provision dealing with the effect of fraud on the title of a registered proprietor. Subsection (2), as we shall see, deals with the rights of a subsequent purchaser.

[24] The counsel for the respondent before us, Ms Yap, submitted that there are two limbs to sub-s. (1).

[25] We agree. The two limbs are as follows:

(i) the first limb provides that an issue document of title or registration procured or made by fraud would be void against the person who had been or would have been defrauded; and

(ii) the second limb provides that any person who has been privy to the fraud as well as any person who subsequently obtains title from the fraudster but who has not provided valuable consideration cannot obtain the benefit of the title or registration.


Any issue document of title or entry or alteration in the Register procured or made by fraud shall be void as against any person defrauded, or who may be defrauded, thereby, and no person who is a party or privy to the fraud, or who claims solely as a volunteer under such person, shall take any benefit therefrom.
Limb 1
Limb 2

The constituent elements of both limbs are explained in detail in the following paragraphs.

The First Limb Of Section 134(1)

[26] Under the first limb of s. 134(1) of the Sarawak Land Code, where an issue document of title has been procured or made by fraud, that title is defeasible at the instance of the person who had been defrauded.

[27] The observation may be made that – and this is the determinative point in the present case – there are no words in first limb of sub-s. (1) that requires the fraud to have been committed by the registered proprietor. It suffices if the registered proprietor's title had been "procured or made by fraud", in which event it will be defeasible at the instance of the defrauded person. On the facts of the present case, the plaintiffs allege that the first and second defendants had acted fraudulently in alienating the land to the third defendant. If the plaintiffs' claims against the first and second defendant are made out, it follows therefore that the third defendant's title would be liable to be set aside. This would be the case even though there is no allegation of fraud against the third defendant.

[28] Before us, learned counsel for the third defendant sought to argue that s. 134(1) may only be invoked if fraud is alleged against the registered proprietor. We were unable to agree with this contention, as such a construction is not supported by a reading of the plain words of s. 134(1). There is no ambiguity at all in the form of words used. The strained construction suggested by the counsel found no support whether in authority or principle.

[29] For these reasons, we were of the view that, even though the learned High Court Judge was correct in that fraud had not been pleaded against the third defendant, nonetheless the law does not require the registered proprietor to be complicit in the fraud before his title may be assailed; it suffices if his title had been procured by fraud by the action of others. Whether or not this was the case in the context of the present case was a matter that must be determined at a trial of the action.

The Second Limb Of Section 134(1)

[30] The wording in the second limb of sub-s. (1) states as follows:

> ... no person who is a party or privy to the fraud, or who claims solely as a volunteer under such person, shall take any benefit therefrom

[31] The second limb deals with two classes of persons:

(i) a person who is a party or privy to the fraud-meaning someone who has been complicit in the fraudulent activity; and

(ii) a person who had obtained title from someone coming within sub-para. (a), but who has not provided valuable consideration for the title. Good faith is immaterial.

[32] Both of these categories of persons may not "take any benefit therefrom". The word "therefrom" in this context refers back to the opening words "[a]ny issue document of title or entry or alteration in the Register". Thus, properly understood, the second limb prohibits; (i) the fraudster, and (ii) persons who had acquired title from the fraudster but who has not provided valuable consideration, from taking any benefit from the title or the register.

[33] The second limb is inapplicable in the context of the present case, because there is no allegation of fraud against the third defendant. In any event, even if a "peppercorn" is adequate consideration, the third defendant had not acquired its title from a prior registered proprietor who was privy to any fraud. The words "volunteer under such person" connotes that the volunteer must have obtained title from a prior registered proprietor. In the present case, there was no prior registered proprietor, because the land in question had been alienated for the first time to the third defendant.

The Bona Fide Subsequent Purchaser For Value: Section 134(2)

[34] Section 134(2) deals with the position of the *bona fide* purchaser for value. Under this subsection, the title of a *bona fide* subsequent purchaser for valuable consideration is unassailable at law.

[35] In our considered view, the respondent cannot avail itself of the protection accorded by s. 134(2) because, on its true construction, sub-s. (2) only protects a *bona fide* purchaser for valuable consideration who is also a subsequent purchaser. This is so because of the presence of the phrase "on the ground that the registered proprietor through or under whom he claims was registered as proprietor through fraud or error", which connotes the existence of a prior registered proprietor. The third defendant in this case does not take its title from a prior purchaser.

[36] For the avoidance of doubt, we express no view as to whether a peppercorn per annum would be sufficient to constitute valuable consideration for the purposes of s. 134(2) or to elevate the status of a registered proprietor from a mere "volunteer" for the purposes of the second limb of s. 134(1). The issue, in our considered view, simply does not arise in the context of the facts of the present appeal. However, the sufficiency of the consideration – whether in a legal or commercial sense – may well have a bearing on the contention of fraud, which will be a matter for ventilation at the trial of the action.

The Pleading Point

[37] The counsel for the third defendant raised the point that the allegation of fraud against the first and second defendants had not been made in the statement of claim, but had only been raised in the reply to the defence.

[38] In our considered view, it is of course preferable that an allegation of fraud that had not previously been raised in pleadings be effected through an amendment of the statement of claim, rather than raised in the reply to the defence. Nonetheless, in the context of the present case, there has not been any contravention of the rules on pleadings.

[39] The applicable provision is O. 18 r. 10 of the Rules of Court 2012, which reads as follows:

> 10. Departure (O. 18 r. 10)
>
> (1) A party shall not in any pleading make an allegation of fact or raise any new ground or claim inconsistent with a previous pleading of his.
>
> (2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

[40] Having carefully reviewed the plaintiffs' pleadings in this case, we were unable to conclude that the contention of fraud in the reply to the defence is inconsistent with the contents of the statement of claim. Even if this had been the case, it was clear that the justice of the case would have required the court to direct the plaintiffs to amend their statement of claim, rather than a total dismissal of the action against the third defendant.

Summary Of The Applicable Principles

[41] The applicable principles may be summarised as follows:

(i) under s. 134(1) of the Sarawak Land Code, where an issue document of title or an entry or amendment on the register of titles has been procured or made by fraud, that title, entry or amendment is defeasible at the instance of the person who had been defrauded. This would be the case even if the registered proprietor had not been complicit in the fraud; for as long as his title or entry onto the register had been procured or made by fraud, his title would be susceptible to challenge by the person defrauded;

(ii) under the second limb of s. 134(1), the title of the following categories of persons are void:

  (a) a person who is a party or privy to the fraud by means of which title or registration had been obtained; and

  (b) a person who had not provided valuable consideration (a "volunteer") and who had obtained title from a prior registered proprietor who had been a party or privy to the fraud by means of which that prior registered proprietor had obtained title or registration. This applies whether or not the volunteer had acted in good faith.

(iii) the title of a *bona fide* subsequent purchaser for valuable consideration is indefeasible by virtue of s. 134(2).

[42] It may thus be seen that the Sarawak Land Code, like the National Land Code 2020, confers upon an acquirer of land deferred indefeasibility upon his registration on the register of titles.

Orders

[43] For these reasons explained in this judgment, we were of the view that the two questions posed in the O. 14A application ought to be answered in the negative. We allowed the appeal with costs and set aside the order of the court below. The plaintiffs' claim against the third defendant was remitted back to the High Court for a determination on the merits.